

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO. 1966 OF 1994

NANMDEO GANPATI AIWALE
AGE 39 YRS., OCCU.SERVICE
R/O.ATPADI TAL.ATPADI,
DIST.SANGLI.

... PETITIONER.

VS.

1. APPASAHEB BABA KELEBAG
AND ORS.

... RESPONDENTS.

MR. N.V.BANDIWADEKAR I/B. LMR. P.D.DALVI FOR
PETITIONER.
NONE FOR THE RESPONDENTS THOUGH SERVED.

CORAM : A.P. DESHPANDE, J.
DATE : January 16, 2007.

JUDGMENT 1. The Respondent No. 2 Bhiwandi Educational Society administers two recognized aided secondary schools by name, Rajaram Bapu Patil High School, Atpadi and New High School, Garniki, Tal.Atpadi, Dist.Sangli. The present petitioner belongs to Schedule Caste Category. The Management of the school took a decision to promote the petitioner to the post of Headmaster having regard to the mandate of Rule 9 of the Maharashtra Employes of Private Schools Regulation Act, 1977. Sub-rule 10-A provides for 13% reservation for SC Category. In the roster, the first vacancy is reserved for the SC Category whereas the reservation prescribed for NT Category is only 4%. It is not in dispute that for the first time, the management has granted the promotion to a Reserve Category candidate, when it took decision to promote the petitioner, the petitioner so also the Respondent NO.1 were eligible for being promoted to the post of Head Master. The Management promoted the petitioner to the post of Headmaster, as he belong to SC Category and though junior to other teachers, from open category so also the Respondent No.10, who was from N.T. Category. When a person is to be appointed by promotion, on the application of a roster, the seniority loses its significance. Seniority inter-se the persons belong to that particular

category would alone matters. The Respondent No.1 being aggrieved by the grant of promotion to the petitioner, filed an appeal before the Presiding Officer, School Tribunal. The School Tribunal has allowed the appeal by holding that the Respondent NO.1, herein, being senior to the petitioner, ought to have been preferred for appointment to the post of Headmaster. The School Tribunal seems to be labouring under impression that all persons for whom reservation is made under Sub Rule 10-A, would form one group and the senior most in that group alone need to be promoted. That foundation for allowing the appeal is erroneous. Model roster would indicate that the first

point is earmarked for SC Category candidate and senior most candidate from SC category need to be appointed in the first vacancy. Though truly speaking it was not the first vacancy when the petitioner was promoted nonetheless it is an admitted position that the petitioner's appointment by promotion was the first one to be granted by the Management to a person from Reserve Category. This being the position it sounds logical that the Management chose to appoint the petitioner to the promotional post, first in point of time. Perusal of the Order passed by the Tribunal reveals that in the entire judgment, the Tribunal has given stress on the issue of inter se seniority of the petitioner and Respondent NO.1 and repeatedly it is observed that the Respondent NO.1 is much senior to the Petitioner. As stated hereinabove, there is no question of comparing seniority of two persons, when they do not fall in the same category of backward class. If a person from SC Category is to be granted promotion, the same would be irrespective of seniority of teachers from open category and other categories of the backward class.. As the Management promoted the petitioner in compliance with the roster, as he happened to be the candidate from SC Category, the Tribunal could not have over-ruled the decision of the Management by allowing the appeal, holding that the claim of the Respondent NO.1, herein, was superseded by the Petitioner. The Petitioner and the Respondent NO.1's claim were not comparable and hence, inter se seniority is an irrelevant factor. I am of the clear view that as the Petitioner was promoted as Headmaster from SC Category, the Respondent NO.1, who was claiming the promotional post from NT Category, could not have successfully challenged the same solely on the ground that he was senior to the Petitioner. In the result, the Petition deserves to be allowed.

2. It may be indecently stated at this stage that the Respondent NO.1 also came to be promoted as Headmaster in the other school, managed by the Respondent No.2 in the year 2001 and had opted for voluntary retirement from 31st December, 2003, he ceases to be in the employment as of now. It will also not be inappropriate to state that during the pendency of the petition, the Judgment and Order passed by the School Tribunal, in favour of the Respondent NO.1, was stayed by this Court.

In this view of the matter, the writ petition is allowed.

The impugned Order passed by the School Tribunal dated 16/17.3.1994 in Appeal No. 182 of 1993 is hereby quashed and set aside.

The Rule is made absolute in the above terms with no Order as to costs.

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[A.P.DESHPANDE, J.]

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLAGE SIDE

WRIT PETITION NO. 1966 of 1994

DATE OF DECISION : January 16, 2007.

For approval and signature :

The Hon'ble Mr. Justice A.P.Deshpande :

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether Their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any Order made thereunder?
5. Whether it is to be circulated to the Civil Judges?
6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur, Goa & Aurangabad Office?
